

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

CHRISTINA JACOBS,

Plaintiff,

v.

// CIVIL ACTION NO. 1:13CV164
(Judge Keeley)

UNITED STATES OF AMERICA,

Defendant.

ORDER DECLARING REPORT AND RECOMMENDATION [DKT. NO. 14] MOOT
AND RECOMMITTING CASE TO MAGISTRATE JUDGE

On June 28, 2013, the pro se plaintiff, Christina Jacobs ("Jacobs"), who is currently incarcerated at FCI Waseca, filed a complaint against the United States, pursuant to the Federal Tort Claims Act, alleging medical malpractice. She claims that, while she was incarcerated at SFF Hazelton, the prison's medical doctor and physician's assistant failed to properly diagnose and treat her injured finger in violation of the West Virginia Medical Professional Liability Act ("MPLA"), W. Va. Code § 55-7B-1, et seq.

That statute requires that "[a]t least thirty days prior to the filing of a medical professional liability action against a health care provider, the claimant shall serve by certified mail, return receipt requested, a notice of claim on each health care provider the claimant will join in litigation." § 55-7B-6(b). The notice of claim is required to include a "screening certificate of merit," which must be "executed under oath by a health care provider qualified as an expert under the West Virginia rules of evidence." Id.

In accordance with LR PL P 2, the case was assigned to the Honorable David J. Joel, United States Magistrate Judge, who performed the initial screening pursuant to 28 U.S.C. § 1915A. On September 3, 2013, Judge Joel entered a report and recommendation (dkt. no. 14), recommending that the Court dismiss the complaint because Jacobs (i) failed to produce the medical opinion of a qualified health care provider, and (ii) failed to comply with the statutory notice requirements of the MPLA.

After the R&R was entered, however, on September 16, 2014, Jacobs filed objections and attached documents purporting to satisfy both the medical affidavit and notice requirements. (Dkt. No. 19). Therefore, the Court **DECLARES** the R&R **MOOT** and, in view of Judge Joel's retirement, **RECOMMITTS** this matter to the Honorable James E. Seibert, United States Magistrate Judge, with instructions to reconsider Jacobs' complaint in light of the documents filed after the R&R was entered.

It is so **ORDERED**.

The Court directs the Clerk to transmit copies of the order to counsel of record, the Honorable James E. Seibert, United States Magistrate Judge, and the pro se plaintiff, return receipt requested.

DATED: May 2, 2014.

/s/ Irene M. Keeley

IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE